

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**

LOS ANGELES UNIFIED SCHOOL DISTRICT, )	
Employer )	
)	
and )	
)	
)	
UNITED TEACHERS OF LOS ANGELES, )	
Employee Organization )	
)	
and )	
)	Case No. LA-R-687
PROFESSIONAL EDUCATORS OF LOS )	
LOS ANGELES, Employee Organization )	EERB Decision No. 5
)	
and )	November 24, 1976
)	
LOS ANGELES SCHOOL COUNSELORS' )	
ASSOCIATION, Employee Organization )	
)	
)	
)	

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Appearances: O'Melveny and Myers by Charles G. Bakaly, Attorney, for Los Angeles Unified School District; Geffner and Satzman by Leo Geffner and Judy Rochlin, Attorneys, for United Teachers of Los Angeles; David Freeman, Attorney, for Professional Educators of Los Angeles; California Pupil Service Employment Corporation by George Dalton, Attorney, and Tom Agin, Director, for Los Angeles School Counselors' Association.

Before Alleyne, Chairman; Cossack and Gonzales, Members.

OPINION

PROCEDURAL HISTORY

On April 1, 1976, United Teachers of Los Angeles (UTLA) filed a request for recognition with the Los Angeles Unified School District (Employer) seeking a unit of all certificated personnel.

On April 1, 1976, the employer also received a request for recognition from Los Angeles School Counselors' Association (LASCA) seeking a unit composed of a secondary school counselors.

On April 30, 1976, Professional Educators of Los Angeles (PELA) intevened seeking to represent a unit of all certificated personnel. PELA also filed a request for recognition on April 30, 1976, seeking a unit consisting of doctors and dentists. On April 30, 1976, the employer notified the Educational Employer Relations Board that it doubted the appropriateness of LASCA's unit, contested the showing of majority support by LASCA, and

doubted the appropriateness of the certificated unit sought by UTLA and PELA. On May 28, 1976, the employer notified the Educational Employment Relations Board that it doubted the appropriateness of the unit of doctors and dentists requested by PELA. A hearing was held on September 1, 2, 9, and 10, 1976, before a hearing officer of the Educational Employment Relations Board for the purpose of resolving the unit questions in this case.

During the course of the hearing, LASCA clarified its position by stating that the unit it was seeking was confined to the following persons:

Those persons employed by Los Angeles Unified School District as secondary school counselors who work three periods per day or more as members of the counseling and guidance staff in secondary schools to which they are assigned who possess a California Teaching Credential and who possess a California Pupil Personnel Services Credential authorizing services in school counseling.

The Employer, UTLA and PELA stipulated the following job classifications defined the certificated unit sought;

Adult School Librarian; Adult Vocation Counselor; Advisor, EMR Work Study Education; Advisor, Student Occupational Placement; Audiometrist; Children's Center Teacher; Clinical Psychologist; Coordinating Audiometrist; Coordinating Field Librarian; Coordinating Librarian; Coordinating Training Teacher; Dental Hygienist; Development Center Teacher; Educational Audiologist; Elementary School Librarian; Elementary Teacher; Full-Time Adult Education Teacher (20 hours or more per week); Instructor and Senior Instructor; Long-Term Substitute Teacher; PSA Counselor; Psychiatric Social Worker; School Nurse; School Optometrist; School Psychologist; School Psychometrist; Secondary School Librarian; Secondary Teacher; Senior Educational Audiologist; Senior School Psychologist; Special Education Counselor; Special Education Librarian; Special Education Teacher; Staff Librarian; Work Experience Advisor; and Young Adult Counselor.

The Employer, UTLA, and PELA stipulated that the certificated unit should also include all day-to-day substitute teachers who are paid for 100 days or more during the preceding school year and all part-time adult education teachers who work 10 hours or more per week, including all ROC and SETA adult education teachers who work ten hours or more per week.

The Employer, UTLA, and PELA also stipulated that the following persons constitute a separate appropriate unit:

Medical Examiner, Psychiatrist, School Dentist, School Physician, and Chest Specialist.

Subsequent to the close of the hearing, LASCA withdrew its petition by letter dated October 22, 1976. However, while PELA did not take a clear position on the status of counselors at the hearing, it did argue for their exclusion in its post-hearing brief.

## DISCUSSION

The issue in this case is whether secondary school counselors should be included in a unit certificated personnel as the employer and UTLA contend, or whether they constitute a separate appropriate unit, the position urged by PELA.

The District is comprised of 753 schools, including Children's Centers. There are 670 elementary and secondary schools. The school district encompasses an area of about 710 square miles. It has an average daily attendance of approximately 676,000 students. There are approximately 30,400 certificated employees employed by the school district. Six hundred and forty-nine of these certificated employees are secondary school counselors whose unit placement is in dispute.

In determining the appropriateness of any unit, we are required by Government Code section 3545(a) to base our decision on three factors: (1) The community of interest between and among the employees; (2) the established practices of the employees, including, among other things, the extent to which such employees belong to the same employee organization; and (3) the effect of the size of the unit on the efficient operation of the school district. By applying these criteria to the case at hand, we conclude that secondary school counselors should be included in the overall unit of certificated employees.

In defining what constitutes a community of interest among and between employees, there are several factors which have been established by the National Labor Relations Board:<sup>1</sup> qualifications, training and skills, job functions, method of

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<sup>1</sup> While we are not bound by N.L.R.B. decisions, we will take cognizance of them, where appropriate. Where provisions of California and federal labor legislation are parallel, the California courts have sanctioned the use of federal statutes and decisions arising thereunder, to aid in interpreting the identical or analogous California legislation. *Alameda County Assistant Public Defenders' Assn. v. County of Alameda*, 33 C.A. 3d 825, 829 (1973); *Fire Fighters' Union v. City of Vallejo*, 12 C. 3d 608, 615-616 (1974); *Social Workers Union Local 535, SEIU, AFL-CIO v. Alameda County Welfare Dept.*, 11 C. 3d 382, 391 (1974); *American Federation of State, etc. Employees, Local 685 v. County of Los Angeles*, 58 C.A. 3d 601, 605, 606 (1976).

wages or pay schedule, hours of work, fringe benefits, supervision, frequency of contact with other employees, integration with work functions of other employees, and interchange with other employees.<sup>2</sup>

Since they are selected from the ranks of teachers, counselors possess the same or similar qualifications, training, and skills as teachers. Each counselor must be a permanent certificated employee who has qualified for tenure as a secondary teacher and must possess a California teaching credential at the secondary level.

Counselors acquire seniority leading to tenure on the basis of their status as teachers. There is no separate seniority schedule of counselors. Personssssssssssssss assigned as counselors are on leave from their teaching positions; their teaching positions are filled by long-term substitutes or another teacher. In other words, counselors have re-entry rights into the ranks of teachers.

Counselors serve at least three periods per day as members of the counseling guidance staff of the secondary school to which they are assigned. During these periods counselors perform a variety of functions, many of which are related to the functions of other certificated personnel within the unit. Their counseling duties, as reflected in the district's job description, include the following:

- to provide individual and group counseling of students about educational, emotional, physical, personal, social, and vocational needs;
- to provide students with information concerning graduation, college entrance requirements and scholarships;
- to advise parents and school personnel with regard to education and personnel problems that may be interfering with students' learning and success in school;
- to assist in organization, administration, and interpretation of standardized testing;
- to interpret the results of standardized group tests of achievement in scholastic ability to administrators, parents, and teachers;
- to assist in coordinating compilation of materials, in cooperation with pupil services workers, for scheduled student case conferences;
- to serve as resource persons to school personnel and parents regarding the counseling guidance program;
- to assist in preparation of information for entry on student cumulative records;
- to contribute data concerning student needs to assist in the development of the total education plan of the school.

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<sup>2</sup> See Kalamazoo Paper Box Corp., 136 N.L.R.B. 134, 137 (1974).

Counselors and teachers are paid on the same salary schedule. However, persons who occupy the full-time counseling positions<sup>3</sup> receive supplemental pay for the performance of their counseling duties. Teachers and counselors are eligible for supplemental pay for coaching, choir, and grade advisor, among other things. A given individual may receive only one such supplement. Some counselors are assigned supervision of students at various sport and social events and during school hours on the same basis as teachers.

Counselors enjoy fringe benefits identical to those of other certificated personnel, including medical, dental, and life insurance, holidays, illness pay leave, and other leaves of absence. Counselors share the same lunch and parking facilities as all other employees. Further, counselors are entitled to sabbatical leave on the same basis as teachers.

Counselors have frequent contact with other certificated personnel, particularly teachers, in supervising students, both during the course of a school day and in extracurricular activities. Counselors spend some portion of their working day discussing the educational development of students with other certificated personnel. Some counselors also teach one period or more per day. Conversely, other certificated personnel, such as grade advisors, psychometrists, clinical psychologists, adult vocational counselors, EMR (Educable Mentally Retarded) work study advisors, student occupational advisors, school nurses, and young adult counselors, perform related counseling functions. Counselors are required to attend faculty meetings; they belong to and hold office in faculty coordinating committees and faculty associations.

There are some interest and working conditions shared among secondary school counselors which distinguish them from teachers. Counseling is performed in counseling centers, which are generally facilities separate from classrooms. Counselors have private offices and they do not have the preparation period allotted to classroom teachers who teach two or more periods per day. Counselors are required to have a pupil personnel services credential with a specialization in pupil personnel services.

We take cognizance of the fact that the characteristics which distinguish counselors from teachers still do not distinguish counselors from other certificated employees included in the unit. For example, while counselors are evaluated pursuant in the

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<sup>3</sup> The district allots a maximum of 3 full-time counseling positions to each school. A principal may augment the counseling staff by appointing additional counselors. The additional counselors, however, do not receive the counseling supplemental pay.

Stull Act <sup>4</sup> by different criteria than classroom teachers, they are evaluated according to the same criteria as other certificated personnel agreed to be in a single certificated unit, including nurses, librarians, PSA(pupil services and attendance) counselors and teachers assisting in the assistant principals office. We find that these several distinguishing characteristics are not sufficient to establish a separate community of interest or separate appropriate unit for the counselors, because, taken together, they do not substantially distinguish counselors from the other certificated employees included in the unit.

In defining the established practices of the employees, the extent to which they have belonged to one organization or another is one criterion. In this case, counselors have historically belonged to both UTLA and LASCA. The record is silent with respect to their membership in PELA. UTLA and PELA have represented counselors along with all other certificated employees in this unit as members of the Certificated Employees' Council established pursuant to the Winton Act.<sup>5</sup> It is clear that the past practices of the counselors and other certificated personnel shed little light on the question of their unit placement.

Finally, there was no evidence submitted nor argument offered on the effect of the size of the unit on the efficient operation of the school district. Therefore, we give this criterion little weight in determining the appropriate negotiating unit in this case.

#### CONCLUSION

We conclude that secondary school counselors in this case share a community of interest with other certificated employees and should be included in the overall certificated unit.

#### ORDER

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<sup>4</sup> The Stull Act, Section 13485 of the Education Code, requires that each school district in the state develop and adopt a system guidelines for the objective evaluation and assessment of the performance of all certificated personnel. Section 13487 outlines the manner in which the governing board of each school district is required to implement this mandate.

<sup>5</sup> The Winton Act, Education Code Sections 13080-13090, governed employer-employee relations in public schools prior to the passage of Government Code Sections 3545 et. seq. It enabled such employee organizations as the school district "may designate" pursuant to "reasonable rules and regulations" to meet and confer" with the school district. No unit criteria or procedures for determining appropriate units existed. See Sweetwater Union High School District, EERB Decision No. 4.

The Educational Employment Relations Board directs that:

1. The following units are appropriate for the purpose of meeting and negotiating, provided an employee organization becomes the exclusive representative:

UNIT A

Included: All certificated employees, including secondary school counselors.

Excluded: All other employees, including medical examiners, psychiatrists, school dentists, school physicians, chest specialists, managerial employees, supervisory employees, and confidential employees.

UNIT B

Included: All medical examiners, psychiatrists, school dentists, school physicians, and chest specialist.

Excluded: All other employees, including managerial employees, supervisory employees, and confidential employees.

2. The employee organization have a 10-workday posting period of the Notice of Decision to demonstrate to the Regional Director at least 30 percent support in the above units. The Regional Director shall conduct an election at the end of the posting period if: (1) more than one employee organization qualifies for the ballot, or (2) if only one employee organization qualifies for the ballot and the employer does not grant voluntary recognition.

by: Jeraaou H. Cossack, Member  
Alleyne, Chairman

Reginald

Date: November 24, 1976

Raymond J. Gonzales, Member, in concurrence:

The result reached by my colleagues rests on an analysis of the facts presented at the time of hearing in this case in light of Government Code Section 3545(a). I do not totally dismiss the nature of the facts which argue for inclusion of the counselors in this case. However, unlike my colleagues, I find more significant the procedural developments of this case. Specifically, I refer to the board certificated unit stipulation entered into by the parties at the time of the hearing. Further LASCA's subsequent withdrawal of its petition for a separate

counselors ' unit, and the failure of PELA to present an affirmative case, instead relying on its post-hearing brief to argue for the counselors exclusion, give reason for even greater concern.

However, it hardly seems consistent, m at this point, to exclude counselors from the stipulated unit which includes such certificated employees as school psychologists, school psychometrists, psychiatric social workers, PSA counselors, and other personnel similarly involved in some aspect of counseling for the student. Were such variety of individuals not stipulated to as part of the unit, I might have been less than inclined to include counselors in a unit predominantly composed of teachers.

LASCA's withdrawal of its petition after the close of the hearing further influences my concern herein. Only LASCA's petition sought the exclusion of counselors as a separate unit. None of the petitions filed by the other employee organizations in this case sought their exclusion. LASCA's withdrawal coupled with the failure of PELA to present any evidence or effective rebuttal testimony hardly warrants the exclusion of counselors in this case.

On the basis of the foregoing and taking into consideration the size and other unique demographic characteristics of the Los Angeles Unified School District noted at the outset of the majority opinion, I would limit this case to its facts such as they are, giving it little precedential value.

Raymond J. Gonzales, Member







